

(2009) 04 AP CK 0051

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6522 of 2008

N. Rani Bai and Another

APPELLANT

Vs

The Defence Estate Officer and Others

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 — Section 10, 10(6),
24, 7, 8

Constitution of India, 1950 — Article 226

Citation : (2009) 5 ALD 114 : (2009) 5 ALT 312

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : B. Adinarayana Rao, for the Appellant; A. Rajasekhar Reddy, Asst. Solicitor General, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioners challenge the order, dated 06.02.2007, passed by the Joint Collector, Ranga Reddy District, the 2nd respondent, in exercise of power u/s 24 of the A.P. (Telangana Area) Abolition of Inams Act, 1955 (for short "the Act").

2. The facts relevant to this Writ Petition, in brief, are as under:

About 50 acres of land in old survey No. 279 of Alwal Village, Malkajgiri Mandal, Ranga Reddy District, was held as Inam by one Sri Narsinga Rao. The father of the petitioners, by name Namasivayam, was permanent tenant of that land under a lease, granted sometime in the year 1910. He died in 1938. During resurvey, in the year 1944, an extent of Acs.13.19 guntas was shown in survey Nos. 349 to 352 and Acs.36.20 guntas was shown in survey Nos. 602 and 603. Out of this, an extent of Acs.32.20 guntas was under lease in favour of the Defence Estate Officer, Secunderabad, the 1st respondent, with effect from 25.02.1963.

3. Consequent upon the abolition of imams in the State of Andhra Pradesh, applications were made by the mother of the petitioners, the wife of the landholder and the 1st respondent for grant of Occupancy Rights Certificates (ORCs), u/s 7 of the Act. After several rounds of litigation, ORC was issued, in respect of the entire land in Sy. No. 602 and 603, in favour of the petitioners, on the strength of an order dated 25-04-1994 passed by the Joint Collector, Ranga Reddy District, the 2nd respondent herein. Compromise was arrived at between the petitioners and inamdars, according to which an extent of Acs.24.20 was to accrue to the petitioners and Acs.12.00, to the land owner/inamdar. The same was recorded by this Court in W.A. No. 474 of 1999, in the order dated 20.04.1999. The compromise was implemented by the Revenue Divisional Officer, 3rd respondent, through proceedings, dated 15.07.1999.

4. The 1st respondent addressed a letter, dated 13.06.2002, to the 2nd respondent stating, inter alia, that out of Acs.24.20 guntas of land, in respect of which ORC was issued in favour of the petitioners, about Ac.4.00 (to be precise Ac.3.95 cents, equivalent to Ac.3.38 guntas) was shown in GLR with the classification "C", in the records maintained by cantonment authorities, and in that view of the matter, it could not have been the subject-matter of ORC, in favour of the petitioners. He accordingly made a request that ORC in favour of the petitioners be restricted to Acs.20.55 cents by deleting Acs.3.95 cents. The 2nd respondent treated the letter as an appeal and issued notice of hearing to the petitioners.

5. The petitioners appeared and raised an objection as to the very maintainability of the appeal before the 2nd respondent. They have also advanced contentions, touching on facts and law. The 2nd respondent allowed the appeal through order dated 15-11-2003. Proceedings dated 15-07-1999 issued by the 3rd respondent were set aside and the matter was remanded to the 3rd respondent for fresh consideration and disposal.

6. The 3rd respondent passed order dated 09-12-2004, after remand. He took the view that the 1st respondent failed to explain as to how it acquired rights over Ac.3.95, claimed by them. Thereupon, the 1st respondent filed appeal before the 2nd respondent. The appeal was allowed through the impugned order. It was held that the very issuance of ORC in favour of the petitioners and the land owner in respect of the land in survey Nos. 602 and 603 through proceedings, dated 15.07.1999, is untenable. The basis for this conclusion was that the petitioners and other owners were not in possession of the land as on the notified date. It was indicated that the 1st respondent, who is in possession of the land, can maintain a claim for the land, u/s 9 of the Act. Sri B. Adinarayana Rao learned Counsel for the petitioners submits that there was no basis for the 2nd respondent to treat the letter dated 13-06-2002, addressed by the 1st respondent, as an appeal. He contends that the proceedings under the Act are governed by the relevant provisions, and the letter cannot be treated as an appeal, u/s 24 of the Act. Learned Counsel further contends that the issue, as

regards grant of ORCs, in relation to the land, assumed finality, with the orders passed by this Court, in W.A. No. 474 of 1999, and that the impugned order amounts to annulling the judgment of this Court in W.A. No. 474 of 1999.

7. Sri A. Rajasekhar Reddy, learned Assistant Solicitor General, appearing for the 1st respondent, and learned Government Pleader for Revenue, appearing for respondents 2 and 3, submit that a serious defect has crept in to the orders, through which, ORC was granted in favour of the petitioners and the inamdar, and that it is competent for the 2nd respondent to take note of the same at any stage, to protect the interests of the State. They contend that the jurisdiction of this Court to interfere with the matters of this nature is very limited, and this Court cannot sit as an appellate authority, over the orders passed by the 2nd respondent. It is further urged that the setting aside of the impugned order, on any ground, would only have the effect of reviving an otherwise illegal order, and that such a course is impermissible in law. Reliance is placed upon the judgments of the Supreme Court in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, ; *Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others*, , and *Roshan Deen Vs. Preeti Lal*, .

8. Fairly large extent of land i.e. 50 acres, in old survey number 279 was held by the father of the petitioners, as a tenant.

9. It is not in dispute that the land is covered by the provisions of the Act, and that the Defence Department of Government of India was a tenant in respect about 32 acres of land. For determination of the rights of the parties, the land was dealt with in two bits by the 3rd respondent. The first was the one, in Sy.Nos.349 to 352, admeasuring 13.19 acres. The claim for grant of ORC was made before the 3rd respondent, in respect of that land, by the mother of the petitioners, by name, Kannamma; the wife of the land owner, Radhamma, the 1st respondent, and Sri N. Sudershan Reddy, said to be a tenant of the land, and certain others. Through his order dated 18-02-1980, the 3rd respondent held as under:

In the circumstances, I reject the claim petition of Smt. Kannamma in toto and confer the occupancy rights in favour of legal heirs of Smt. Radhamma in respect of Sy. Nos. 602 and 603 since the possession, over these lands in all respects continued to be in their possession right from the beginning. The Military being an Government Department cannot claim any occupancy rights as in individual under Inam Abolition Act. I further order in respect of Sy.Nos.349 to 352 occupancy rights be conferred in favour of Shri N. Sudershan Reddy, u/s 8 of the Act as he is the successors-in-interest, and in possession over the lands on the date of vesting.

10. This order is said to have become final.

11. As regards the land in Sy. Nos. 602 and 603, several proceedings ensued. The case of the 1st respondent was rejected. Ultimately, the 2nd respondent passed an order dated 25-04-1994, directing that ORC be issued in respect of

24.20 acres of land in favour of the petitioners. The legal representatives of the inamdar filed W.P. No. 13412 of 1994. It was dismissed on 27-01-1999. Writ Appeal No. 474 of 1999 was filed against it. At that stage, the dispute was compromised between the petitioners, on the one hand, and legal representatives of the inamdar, on the other hand, and it was recorded by this Court. The relevant portion of the order in the writ appeal reads as under:

In accordance with the provisions of section (6) read with Section 10 of the Act Andhra Pradesh (Telangana Area) Abolition Act, 1955. Smt. N. Rani Bai and Smt. N. Suguna Bai, daughters of late Smt. Kannamma residing at Alwal village shall be registered as occupants in respect of the land specified in the Schedule below and shall be liable to pay to Government an amount of Rs. ..towards premium in lumpsum. They/he shall also liable to pay Land Revenue Assessment in respect of the said land in accordance with the provisions of the Act in Section (6) Sub section (3).

12. This in turn, was implemented by the 3rd respondent, through order dated 15-07- 1999. It is important to note that the 1st respondent did not challenge the order dated 25-04-1994, passed by the 2nd respondent, which constituted the basis for grant of ORC in favour of the petitioners, may be with slight modification, on account of compromise, that was recorded in W.A. No. 474 of 1999.

13. The 1st respondent addressed a D.O. letter dated 13-06-2002, to the 2nd respondent. His concern was that out of 24.20 acres of land, in respect of which, ORC was granted in favour of the petitioners, as a sequel to the compromise in W.A. No. 474 of 1999, an extent of about 4 acres of land was recorded in GLR with classification "C", and that the same deserves to be excluded. The ultimate request made by him was contained in paragraph 5, which reads as under:

In view of what has been explained above, I shall be grateful, if you could look into the matter and issue revised Occupancy Rights Certificate restricting the extent of land to 20.55 acres (i.e.24-32(-)3.95) in favour of Smt. N. Rani Bau and Smt. N.Suguna Bai in orer to safeguard Government interest in the matter.

14. Two aspects become relevant in this regard, viz., 1) whether it was competent for the 2nd respondent to treat the letter dated 13-06-2002, addressed by the 1st respondent as an appeal, u/s 24 of the Act, and thereby to reopen the proceedings; and 2) whether it was permissible for respondents 1 to 3 to meddle with the arrangement recorded by this Court, in W.A. No. 474 of 1999.

15. On receipt of the letter dated 13-06-2002, the 1st respondent issued notice to the petitioners and after hearing them, he passed an order dated 15-11-2003, setting aside the proceedings dated 15-07-1999, issued by the 3rd respondent, and directing the latter, to conduct fresh enquiry. The relevant portion reads as under:

In view of the above the order passed by the Revenue Divisional Officer, Chevella in case No. L/1299/99 dated 15.7.99 is set aside and remanded back to the Revenue Divisional officer Chevella for enquiry and disposal in accordance with law within a period of two months from the date of receipt of copy of this order.

16. Strictly speaking, the 2nd respondent committed Contempt of this Court, by setting aside the proceedings dated 15-07-1999, through which, the order in W.A. No. 474 of 1999 was implemented. Be that as it may, the 3rd respondent took up the matter after remand, and passed a detailed order, dated 09.12.2004, pointing out as to how the claim made by the 1st respondent is untenable. Once again, the 2nd respondent entertained the appeal preferred by the 1st respondent and allowed the same with the following directions:

Therefore, the appeal is allowed and the impugned order of the Revenue Divisional Officer passed in Procs. No. L/3901/2003, dt.9-12-2004 confirming Occupancy Rights Certificate granted in respect of Sy. No. 602 & 603 for an extent of Acs.19-39 & 16-21 gts respectively vide L/1299/1999 Dated:15-07-1999 is set aside. The land being inam land, vest with state, upon abolition of Inams.

17. In the recent past, it has become a matter of routine, if not policy, for the revenue authorities, particularly at the stage of Joint Collectors, to search ways, legal or otherwise, to avail every possible opportunity to get as much land, particularly urban land, as possible to the Government. It is virtually immaterial for them, whether the proceedings are initiated before them in the form of appeals and revisions, or through other unknown means. In extreme cases, suo motu powers are also exercised. The case on hand is one such.

18. One cannot understand the rationale behind the impugned order passed by the 2nd respondent. He did not have the basic discipline of honouring his own orders dated 25-04-1994, that ultimately became the subject matter of the orders of this Court in W.A. No. 474 of 1999, or the outcome of the writ appeal, to which he was very much party, though not as a party to the compromise. He just did not care to verify as to how the proceedings were initiated before him by the 1st respondent or the scope of the letter, dated 13.06.2002. Assuming that there did not exist any legal impediment in accepting the request of the 1st respondent, the maximum that could have been done was, that the ORC in respect of 3.95 acres of land be set at naught, and that the one, given to the petitioners be restricted to 20.55 acres. The request was only for that. It was not even realized that the proceedings are under a special enactment and there is hardly any scope for the D.O. letters for being treated as appeals.

19. Ignoring these limitations, the 2nd respondent felt that, it is open to him to trample the rights of the petitioners, that have accrued to them on the basis of adjudication under the Act by various authorities, and most importantly, by himself, vide orders dated 25-04-1994. This Court takes serious exception to the manner in which the 2nd respondent had conducted himself, and the

proceedings. The merits or otherwise of the claim made by the 1st respondent could certainly have been examined in a properly constituted proceedings. Its limited grievance was about 3.95 acres of land, and separate proceedings ought to have been initiated in accordance with law, duly pleading the relevant facts and law, as to the character of that piece of land. In such an event, the impact of the entries in GLR, vis--vis the rights under the Act, could have been considered.

20. Assuming that it was competent for the 2nd respondent to treat the letter dated 13-06-2002 as an appeal, no relief could have been granted, except by meddling with the arrangement recorded by a Division Bench of this Court in Writ Appeal No. 474 of 1999. As a matter of fact, the 1st respondent referred to the writ appeal, in his letter. If any basis existed for modification of the order in writ appeal, an application ought to have been filed, seeking review etc. Here again, the 2nd respondent did not feel deterred to meddle with the arrangement recorded by this Court, may be indirectly. It hardly needs any emphasis that what can not be done directly, can not be done indirectly also.

21. It is true that this Court cannot act as an Appellate Authority while hearing the writ petition under Article 226 of the Constitution of India, and to the extent possible, the determination made by the concerned authorities under the relevant enactments must be left to become final. The Hon'ble Supreme Court, in the judgments relied upon by the learned Assistant Solicitor General, did emphasize the said principle. However, nowhere it is suggested that this Court should remain oblivious to the blatant illegalities committed by the authorities under the Act. In fact, a duty is cast upon this Court, to ensure that Rule of Law is observed, and the authorities act within the limits of powers conferred upon them. The discussion undertaken in the preceding paragraphs discloses that the 2nd respondent has committed patent illegality in issuing the impugned order.

22. This Court could have given a quietus to the proceedings by setting aside the impugned order, but for the fact that an important aspect, viz., the effect of piece of land being included in ORC was not dealt with, at any stage of the proceedings, with reference to the relevant provisions of law.

23. Hence, the writ petition is allowed, and the impugned order is set aside. The matter is remanded to the 2nd respondent, directing that, he shall confine his consideration to the effect of inclusion of 3.95 acres of land in Sy. Nos. 602 and 603 of Alwal Village in the GLR and the consequence, if any, thereof on the ORC issued to the petitioners. He shall take into account the various grounds, that may be urged by the petitioners, on the one hand, and the 1st respondent, on the other hand, and shall not at all deal with the balance of 20.55 acres of land, in any manner.

24. There shall be no order as to costs.